Karunairajah a/l Rasiah v Punithambigai a/p Poniah

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B–02–891 OF 1999
MOKHTAR SIDIN, HAIDAR AND ABDUL KADIR SULAIMAN JJCA
11 FEBRUARY 2003

Family Law *— Children — Maintenance — Dissolution of marriage by mutual consent — Appellant agreed to pay maintenance for the children of the marriage — Appellant ceased maintenance payment in respect of eldest child on her attaining 18 years of age — Whether court could direct husband to provide for maintenance of the children until their tertiary degree — Whether the eldest child was suffering from any physical or mental disability to enable the court to make the order — Law Reform (Marriage and Divorce) Act 1976 s 95*

By a court order, the appellant had consented to several orders made ('the consent order') including the payment of maintenance for the three children of the marriage. Pursuant to the consent order, the appellant made maintenance payments for all his three children, but in respect of Anitha a/p Karunairajah ('Anitha'), the eldest child of the marriage, the payment made was only up to April 1998. By notice, the appellant had informed that he would cease payment in respect of Anitha as she has attained the age of 18 years, pursuant to s 95 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). The consent order did not expressly state that the maintenance payments in respect of the children would cease upon them attaining the age of 18 years. Following the aforesaid notice and the cessation of payment in respect of Anitha by the appellant, the respondent made an application to the High Court for an order to extend the making of maintenance payment in respect of Anitha until the completion of her tertiary or until further order. The learned judge allowed the application of the respondent. Against this order of the learned judge, the appellant appealed to this court. The issue was whether the child in this case was suffering from any physical or mental disability to enable the court to make the order sought for.

Held, dismissing the appeal:

(1) Involuntary financial dependence is a physical disability under s 95 of the Act. Indeed the matter before the court was such a case. This involuntary financial dependence can also be taken as a mental disability under s 95 for the purpose of the child of the marriage pursuing their tertiary education in order to be better equipped in their future working life (see p 537D–E); *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109 followed; *Gisela Gertrud Abe v Tan Wee Kiat* [1986] 2 MLJ 297 distinguished.

(2) It could not have been the intention of the legislator in incorporating the provisions of s 95 into the Act to make the children worst off in the event of the break up of the marriage of their parents compared to children living together with their parents under the same roof (see p 538B–C).

(3) The maintenance payments by the appellant would cease the moment Anitha or any of his children could reasonably fend for themselves. By that, the court meant the children could not be expected to remain idle without any effort made to be standing on their feet but to live on the income of their parent simply because they are the children of the parent. In such a situation, without any physical or mental disability, it is appropriate that s 95 of the Act would apply in that the maintenance in respect of them would cease on their attaining the age of 18 years. But, on the other hand, if the children fail to fend for themselves upon attaining the age of 18 years for the opportunity available to further their education for a better future in life, then in not doing so, they cannot be deprived of their maintenance by the parent (see pp 538G–539A).

[Bahasa Malaysia summary

Melalui satu perintah mahkamah, perayu telah bersetuju dengan beberapa perintah yang dibuat ('perintah persetujuan tersebut') termasuk berkenaan dengan bayaran nafkah anak-anak kepada perkahwinan beliau dengan responden. Menurut perintah persetujuan tersebut, perayu telah membuat bayaran nafkah untuk ketiga-tiga anaknya, tetapi berhubung dengan Anitha a/p Karunairajah ('Anitha'), anak sulung dari perkahwinan tersebut, bayaran dibuat hanya sehingga April 1998. Melalui notis, perayu telah memaklumkan bahawa beliau akan berhenti membuat bayaran nafkah Anitha kerana Anitha telah mencapai usia 18 tahun, menurut s 95 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut'). Perintah persetujuan tersebut tidak menyatakan bahawa bayaran nafkah anak-anak tersebut akan berhenti setelah mereka mencapai umur 18 tahun. Berikutan notis tersebut dan pemberhentian bayaran nafkah Anitha oleh perayu, responden telah membuat satu permohonan kepada Mahkamah Tinggi untuk melanjutkan bayaran nafkah Anitha sehingga tamat pengajian tinggi beliau atau diperintahkan seterusnya. Hakim yang bijaksana telah membenarkan permohonan responden tersebut. Berdasarkan perintah hakim yang bijaksana tersebut, perayu telah merayu ke mahkamah ini. Persoalannya adalah sama ada kanak-kanak dalam kes ini mengalami apa-apa ketakupayaan fizikal atau mental untuk membolehkan mahkamah membuat perintah seperti yang dipohon.

Diputuskan, menolak rayuan tersebut:

(1) Kebergantungan kewangan yang di luar kawalan adalah satu ketakupayaan fizikal di bawah s 95 Akta tersebut. Sudah tentu perkara di hadapan mahkamah adalah satu kes sedemikian. Kebergantungan kewangan luar kawal ini juga boleh dianggap sebagai satu ketakupayaan mental di bawah s 95 bagi tujuan anak dari perkahwinan tersebut menyambung pengajian tinggi mereka

untuk melengkapkan diri mereka untuk mendapatkan perkerjaan (lihat ms 537D–E); *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109 diikut; *Gisela Gertrud Abe v Tan Wee Kiat* [1986] 2 MLJ 297 dibeza.

(2) Ia mungkin bukan niat pembuat undang-undang memasukkan peruntukan s 95 Akta tersebut untuk menjadikan hidup kanak-kanak tersebut lebih susah akibat keretakan perkahwinan ibubapa mereka berbanding kepada kanak-kanak yang tinggal bersama dengan ibubapa mereka di bawah bumbung yang sama (lihat ms 538B–C).

(3) Bayaran penyenggaraan oleh perayu akan berhenti apabila Anitha atau mana-mana daripada anaknya boleh dengan munasabah mencari penyanggaraan mereka sendiri. Dengan itu, bermaksud anak-anak tersebut tidak boleh dianggap tidak berbuat apa-apa tanpa apa-apa usaha untuk berdiri sendiri tetapi untuk hidup atas pendapatan ibubapa mereka hanya kerana mereka adalah anak-anak ibubapa tersebut. Dalam keadaan sedemikian, tanpa apa-apa ketakupayaan fizikal atau mental, ia adalah sesuai untuk memakai s 95 Akta tersebut di mana penyenggaraan mereka akan berhenti apabila mereka mencapai umur 18 tahun. Tetapi, sebaliknya, jika anak-anak tersebut gagal untuk menampung diri mereka sendiri setelah mencapai umur 18 tahun kerana ingin mendapat peluang melanjutkan pelajaran mereka untuk masa depan yang lebih cerah dalam hidup, maka dengan tidak berbuat demikian, mereka tidak boleh terkilan daripada mendapat penyenggaraan dari bapa mereka (lihat ms 538G–539A).]

Notes

For cases on maintenance, see 7 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2693–2704.

Cases referred to

Ching Seng Woah v Lim Shook Lin [1997] 1 MLJ 109 (folld)
Gisela Gertrud Abe v Tan Wee Kiat [1986] 2 MLJ 58 (refd)
Gisela Gertrud Abe v Tan Wee Kiat [1986] 2 MLJ 297 (distd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 83, 95

Balwant Singh Sidhu (*Balwant Singh Sidhu & Co*) for the appellant.
YN Foo (*Anand Porumudurai* and *Mahendran* with her) (*RR Chelliah Brothers*) for the respondent.

Abdul Kadir Sulaiman JCA (delivering judgment of the court): By a court order of 30 January 1997, the appellant had consented to several orders being made including para (ii) thereof in the following terms:

> The respondent (the appellant) is required to pay to the petitioner (the respondent) a sum of RM4,200 (ie RM1,400 per child) as maintenance for the three children of the marriage with effect from 1 January 1997 and arrears amounting to RM60,000 by way of full and final settlement within three months from the date hereof.

Pursuant to the aforesaid order, the appellant made maintenance payments for all the three children, but in respect of Anitha a/p Karunairajah, the eldest child of the marriage, the payment made was only up to April 1998. By his letter dated 12 May 1998 the appellant informed that he would cease payment in respect of the child as she has attained the age of 18 years.

It is to be noted that the said consent order did not expressly state that the maintenance payments in respect of the children would cease upon them attaining the age of 18 years. It provided for the payment of RM1,400 per month per child effective from 1 January 1997. Hence, the implication generally is that the provision for maintenance in respect of the children was to be made until the children could fend for themselves, at least until they complete their first degree in tertiary education.

However, there is a provision in the Law Reform (Marriage and Divorce) Act 1976 ('the Act') in s 95 which states:

> Except where an order for custody or maintenance of a child is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is *under physical or mental disability*, on the ceasing of such disability, which ever is the later. (Emphasis added).

In other words, if a child is under such disability, the maintenance payment would continue to be paid even if the child's age is beyond 18 years.

Following the aforesaid notice and the cessation of payment in respect of the said eldest child by the appellant, the petitioner by a summons in chambers dated 2 December 1998, made an application to the High Court for an order to extend the making of maintenance payment in respect of Anitha until the completion of her tertiary or until further order.

Hence, the issue before the High Court was whether the child in this case was suffering from any physical or mental disability to enable the court to make the order sought for.

Following the decision of the Court of Appeal in *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109, the learned judge found that the child was entitled to the extended maintenance payment, as she was suffering from involuntary financial dependence to pursue her tertiary education. According to the decision of the Court of Appeal, the involuntary financial dependence of a child of the marriage for the purposes of pursuing and/or completing tertiary education in order to obtain a first degree comes within the exception provided for by s 95 of the Act. The learned judge accordingly allowed the application of the petitioner by ordering that the said consent order be extended beyond the age of 18 years in the event that Anitha gains a place in any public or private educational institution of higher learning in order to obtain her first degree. Against this order of the learned judge, the appellant now appeals to us.

A In making his decision, the learned judge distinguished the decisions in *Gisela Gertrud Abe v Tan Wee Kiat* [1986] 2 MLJ 58 at first instance which later went on appeal to the Supreme Court reported in *Gisela Gertrud Abe v Tan Wee Kiat* [1986] 2 MLJ 297.

On 10 January 2001, we dismissed the appeal of the appellant against B the learned judge's decision and we now provide the reasons therefor.

In *Gisela Gertrud Abe*, which facts are somewhat similar to the present matter before the High Court, an order for maintenance was made in respect of the two children of the marriage effective from 1 January 1979. In the course of time, the respondent was unemployed for a period of seven months and so was in arrears of the payment. Subsequently, he found C employment elsewhere with a reduced income.

He applied to the High Court under s 83 of the Act to vacate the maintenance order made against him earlier for the period of his unemployment and to vary the amount of such maintenance after such period. In his application, he did not specifically seek to vary the D maintenance order in respect of the children on the ground of s 95 of the Act that the children were above the age of 18 years.

As the event turned, at the time of the application, the elder of the two girls was 22 and the younger would be 18 in the following month. The learned judge was satisfied that the respondent there had undergone a material change in his financial standing as to render it unjust by reason of E such change to expect him to continue to be bound by the original maintenance order, which includes the order for the payment of maintenance to the two children of the marriage. On the matter of maintenance for the two children, the learned judge had this to say at p 60:

> This brings me to consider the position of the two children of the marriage and F their entitlement to be maintained by their father, the respondent. The petitioner feels very strongly that she is duty bound to provide them with the best education which they are now receiving in England and she maintains that the respondent is morally bound to maintain them while they are there .... Under s 95 of the Law Reform (Marriage and Divorce Act) 1976, the duration of a maintenance order made in favour of a child expires, in the G absence of any expressed shorter period, on the child attaining the age of 18 years. Reading this section, it is clear that it is a mandatory provision and that being the case, I consider that consideration of moral grounds is of no relevance whatsoever. To that end the respondent's legal responsibility to maintain the elder of the two children ended when she became 18 on 8 December 1980 and that of the younger daughter will end on 31 May 1985 H when she too celebrates her 18th birthday.

Accordingly, at p 61 she ruled as follows:

> Thus, from January 1984 until 31 May 1985, I hold that the respondent is only legally responsible for maintaining only the petitioner and the younger of the two children and having due regard to the respondent's liabilities, his I sources of income and the petitioner's financial standing, I consider that RM800 will not be an unreasonable sum to expect from the respondent by way of maintenance and accordingly I vary the amount of maintenance from RM1,500 to RM800 effective from 6 January 1984. On the second daughter

> attaining her 18th birthday next month, this sum of RM800 is to be further reduced as the number of persons legally entitled to be maintained by the respondent will be reduced to one, the petitioner herself, and based on similar considerations of the financial positions of both the petitioner and the respondent, I reduce the amount of maintenance to RM400 and with effect from 1 June 1985, the amount of maintenance to be paid by the respondent to the petitioner shall be reduced from RM800 to RM400 per month and to that extent, the maintenance order of 4 May 1979 is further varied.

The wife petitioner, unhappy with the decision of the learned judge, went on appeal to the Supreme Court. There her appeal was allowed and the decision of the High Court was varied. It saw no good reason to differ from the learned judge in the exercise of her discretion regarding the part of the maintenance order during the seven months period of the husband's unemployment except to substitute 'suspend' for the word 'rescind' thereof. It substituted the figures of RM900 for RM800 per month from 6 January 1984 to 31 May 1985 and RM600 for RM400 each month from 1 June 1984 onwards. In any event, the Supreme Court did say that an order for maintenance of a normal child of the marriage shall expire on the child attaining the age of 18 years as so provided by s 95.

Before the High Court and the Supreme Court, in that case, the matter of disability of the child was not in issue. Therefore, in our view, this case is not the authority on the interpretation of s 95 of the Act in particular, matters concerning the disability of the child of the marriage which forms one of the exceptions to the section, which can be distinguished from the present case before us.

Reverting back to the case of *Ching Seng Woah*, which the High Court in the present appeal followed, there was a break up in the marriage between the petitioner and the respondent. On 21 November 1994, the learned judge of the High Court ordered that the respondent pay RM1,000 per month for both children of the marriage, their medical bills, and their education up to tertiary first degree by way of maintenance. The respondent appealed to the Court of Appeal against the order. He urged that the learned judge should not have ordered any maintenance at all for each of the children beyond their 18th birthday relying on s 95 of the Act. To this, the Court of Appeal said at p 119:

> At the trial, contrary to his answer in totally denying any liability for maintenance for his wife or children, the husband agreed in his evidence in chief to pay maintenance to his two daughters and support their education until they receive their first degree. In his final submission, the husband's counsel challenged the wife's right to any maintenance at all since she earned RM1,300 per month and he has now offered to take on the burden of the maintenance and education of his two daughters.

Having considered the provision of s 95 of the Act, the Court of Appeal went on to say at p 120:

> Mr Sidhu contends that this means that unless the exceptions apply, all orders for custody or maintenance shall expire on the attainment by the child of the

A age of 18 years. The exceptions are where the order itself specifically is for a shorter period, or the child is under physical or mental disability.

When parents divorce, the children suffer the most. If Mr Sidhu is right, every able bodied child of 18 can be turfed out into the streets with impunity! Not only can they not look to their parents thereafter for money but also by inference for shelter in the matrimonial home! Section 95 could thus become B the *bohsia*'s charter.

In the narrow context of this case, this submission is somewhat startling because it comes from a husband who in the court below undertook on oath and with the benefit of legal advice to maintain his daughters till they received their first degree, ie till they were educationally equipped to find their rightful place in the job market. It is a fundamental doctrine of law that a person C cannot be permitted to reprobate what he has approbated. We therefore reject this submission.

As to its wider implications, our view is that the powers provided for the protection of children by Pt VIII of our Act are additional to and not restrictive of the powers contained in Pts VI and VII. Part VIII, s 95 in particular, has to be viewed in the context of a child who is not simultaneously D faced with the break up of the family homestead. The parental duties in this context are spelt out by s 92 and it extends to accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

Here the two boys (daughters?) are both enjoying a tertiary education; and the issue is whether the court can direct the husband to provide for his E daughters till their tertiary degree, *even if he had not undertaken to do so*. The court's powers under s 52 are very wide and transcend the limitations contained in s 95, because s 52 operates in a situation where the family is being legally disintegrated.

Mr Sidhu did not canvas what the words 'physical or mental disability' in s 95 meant. An 18 year old computer whiz-kid who is a wheel chair case and F therefore well able to earn a living at that age could here be contrasted with another 18 year old who is physically and mentally fit but is otherwise totally unable to fend for himself on the job market. In the present case, we have no evidence of the accomplishments of the two daughters. However, we must take note that, unlike the United Kingdom and many other European countries, Malaysia is not a welfare state. Whilst the married women's claim G to a share of the matrimonial assets is now entrenched in our laws, the rights of the dependent young persons in these assets is yet to receive proper articulations. *Kulasingam v Rasammah* [1981] 2 MLJ 36 was not cited to us, but that 20 year old daughter was claiming under the Married Women and Children (Maintenance) Ordinance 1950. Notwithstanding the definition of disability under s 17 of the English Children's Act 1989 (also not cited to us H but see *Bromley's Family Law* (8th Ed) at p 643), we are inclined to the view that in appropriate cases, *involuntary financial dependence* is a physical disability under s 95 of the Act. There are far reaching social implications here and we would prefer to say no more now as to whether English attitudes are suitable to Malaysian conditions in such a case or its corollary which is the duty to aged and dependent parents by their progeny. We would however reiterate that the question of proper provision under s 52 of the Act and the I powers of property division under s 76 (as opposed to providing maintenance simpliciter) could involve transfers of property not just for the benefit of the spouses inter se but also for the benefit of the dependent children.

> At the time of the decree nisi, the elder daughter was just over $16^{1}/_{2}$ years and the younger just over $13^{1}/_{2}$ years. They had rights which had to be, and must have been, taken into account by the trial judge when she apportioned the assets as she did. Had either parent refused to maintain them, the court would have had to consider what independent right they had against the parental assets to secure their position (see s 79 of the Act). (Emphasis added.)

On the above analysis, the Court of Appeal dismissed the appeal by the husband/respondent with costs and affirmed the order of maintenance earlier made by the High Court in respect of both children of the marriage.

Back to the mainstream in this appeal before us now, the learned judge at the end of the day, came to the following conclusion:

> In my view, the general principle which may be culled from the respective judgment of both the High Court and the Supreme Court (in *Gisela*'s case,) is that the legal duty of a parent to maintain his or her child ceases when the child attains the age of 18 years. However, a careful reading of both the judgments makes it obvious to me that no view had ever been ventilated by the respective learned counsel therein relating to the application of the exceptions pertaining to, eg the physical disability brought about by a child's involuntary financial dependence for the purposes of pursuing and/or completing tertiary education in order to obtain a first degree, in which case, s 95 creates an exception in that maintenance does not cease at the age of 18 years but would continue until the physical disability ceases. Hence this exception would entitle the child to maintenance beyond the age of 18 years. In the circumstances, it is my view that both the High Court and the Supreme Court judgments are authorities only for the principle that as a general rule, under s 95, the maintenance of a child shall cease upon a child of the marriage attaining the age of 18 years. Both the High Court and the Supreme Court did not have the opportunity to hear submissions or decide on the question as to what constitutes physical disability under s 95, which is the issue for determination by this court in the instant case.

Guided by the decision in *Ching Seng Woah*, the learned judge accordingly varied the earlier consent order of 30 January 1997 by extending the maintenance payment beyond the age of 18 years in the event that Anitha and/or other children of the marriage do gain a place in any public or private educational institution of higher learning in order to obtain their first degree respectively, by concluding as follows:

> It is crystal clear that the decision of the Court of Appeal focuses specifically on the interpretation of the phrase 'physical disability' which is directly and pertinently on the same issue before me. In the circumstances, I hold that this is the case in which I am bound to follow the decision of the Court of Appeal, pertaining to the continuance of maintenance in favour of a child of the marriage under a physical disability pursuant to s 95, by reason of a child's involuntary financial dependence for the purpose of pursuing and/or completing tertiary education in order to obtain a first degree.
>
> Although it is true that in *Ching Seng Woah*, the husband had undertaken to maintain the children of the marriage till they receive their first degree, while the respondent (appellant) in the instant case has not given any undertaking, in my view, the difference is insignificant as it has been clearly

> elucidated by the Court of Appeal in *Ching Seng Woah*, at para H of p 120 that the court can direct the husband to provide for his daughters till their tertiary degree, *even if he had not undertaken to do so.* (Emphasis added.)

Before us, the learned counsel for the appellant conceded that the maintenance order of 30 January 1997 was a consent order wherein the appellant did agree to pay a monthly sum of RM1,400 per child giving a total of RM4,200 for the three children of the marriage, as maintenance, and RM60,000 towards arrears of maintenance. However, by virtue of s 95 of the Act, counsel submitted that the said order shall *pro tanto* expire on the attainment by each child of the age of 18 years unless the child suffers a physical or mental disability. He relied heavily on *Gisela Gertrud Abe*. But as stated by the learned judge, with whose view we agree, this case can easily be distinguished as the courts there applied the general principle in s 95 without having the benefit of argument on the disability exception contained in the section.

To reiterate, on our part, we associate with the views expressed by the Court of Appeal in *Ching Seng Woah* mentioned earlier that in appropriate cases, involuntary financial dependence is a physical disability under s 95 of the Act. Indeed the matter before us is such a case. We may even go a step further in saying that this involuntary financial dependence can also be taken as a mental disability under the section for the purpose of the child of the marriage pursuing their tertiary education in order to be better equipped in their future working life. It needs able body and mind to undergo a tertiary education. A father with the mother together would not want their children to miss this golden opportunity of a tertiary education to be given to their children and indeed would be aspiring for it. More so in this case, when we look at the affidavit of the respondent in support of her application for continued maintenance payment beyond the age of 18 years. At para 8 of her affidavit in support affirmed on 17 November 1998, she deposed as follows:

> I crave leave of this honourable court to state that Anitha is currently pursuing her 'A' levels in the United Kingdom and that the respondent (appellant) is not contributing in any way towards her education. It has been the intention of the respondent (appellant) all along for Anitha to pursue a career in medicine following his footsteps which compelled the petitioner to send Anitha to the United Kingdom as it is common knowledge that one stands a better chance of obtaining the two 'A' grades that are a pre-requisite to entry into medical college in the United Kingdom.

The appellant's reply to the averment was simply that he has been advised and verily believe that the right to receive maintenance ceases upon the child attaining the age of 18 years.

It is indeed unfortunate for the appellant and the respondent to have to undergo the break up in their marriage. But for that their children should not be penalized. They would have wished that their parents would remain together with them under the same roof until such time they could fend for themselves in the work market. For the break up of the marriage, they have to sacrifice their educational talent to pursue their studies at the tertiary

institution because the father has refused to make provisions for them to do so hiding behind the strict interpretation of s 95 of the Act. The pertinent question to ask is, if their marriage had not gone to the rocks, would the appellant had left his children to wander in the street to fend for themselves upon their attaining the age of 18 years? Surely not. No sensible parents would have done that to their children. The relevant paragraph in the affidavit in support of the respondent's application mentioned earlier speaks volumes of the wish of the appellant as to the future pursuit of Anitha, in particular. The future of the children's well-being would be his paramount consideration. It is our view, therefore, that it could not have been the intention of the legislator in incorporating the provisions of s 95 into the Act to make the children worst off in the event of the break up of the marriage of their parents compared to children living together with their parents under the same roof.

Therefore, the learned judge was correct in so making his order extending, in the circumstances, the payment of maintenance to the child beyond the age of 18 years for the reason given. Going on the facts of the present case, the children of the marriage, between the respondent and the appellant, including Anitha, are in the custody of the respondent. By s 92 of the Act, it becomes the duty of either the appellant or the respondent to maintain or contribute to the maintenance of their children, whether they are in the respondent's or the appellant's custody, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to either of their parent's means and station in life or by paying the cost thereof. By the maintenance order of 30 January 1997, the appellant had consented to shoulder the responsibility of maintaining their three children by providing, through the respondent, a sum of RM1,400 per month per child effective from 1 January 1997. The consent order does not expressly state as to when the maintenance payments in respect of them are to cease from being payable by the appellant. Of course, it will not go on forever. By necessary implication it will cease the moment the said children or any of them could reasonably fend for themselves. In the case before the learned judge, the appellant's means and station in life was not made an issue at all except that at whatever cost he maintains that under the Act, he is no longer liable because the child had reached the age of 18 years except under physical or mental disability as provided for under s 95 of the Act.

We advisedly said earlier that by necessary implication the maintenance payments by the appellant will cease the moment the said children or any of them could reasonably fend for themselves. By that, we meant the children could not be expected to remain idle without any effort made to be standing on their feet but to live on the income of their parent simply because they are the children of the parent. In such a situation, without any physical or mental disability, in the sense we interpreted earlier, it is appropriate that s 95 of the Act would apply in that the maintenance in respect of them would cease on their attaining the age of 18 years. But, on the other hand, if the children fail to fend for themselves upon attaining the age of 18 years for the opportunity available to further their education for a better future in

life, then in not doing so, they cannot be deprived of their maintenance by the parent.

In the light of that, therefore, in certain circumstances such as the present, s 95 of the Act should not be looked at in isolation. It may well be appropriate as a general principle to be applied notwithstanding the qualification provided for in the section. However, in a given situation such as in the present case, it should be construed in a more liberal fashion in the light of the duty imposed upon the parent to maintain their children as embodied in s 92 of the Act. We therefore, agree with the views expressed by the learned judge in arriving at his decision in this matter.

For the reasons stated, we dismissed the appeal with no order made as to costs and ordered that the deposit be refunded to the appellant.

Appeal dismissed.

Reported by Peter Ling